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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

13 PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 v.

16 CURREN PRICE JR.,

17 Defendant.

18 Case No. BA515782

**DEFENDANT CURREN PRICE JR.'S
NOTICE OF DEMURRER AND
DEMURRER; MEMORANDUM OF POINTS
AND AUTHORITIES**

19 Date: TBD

Time: TBD

Dept.: 30

Judge: Hon. Kimberly Baker Gillemet

20
21 TO THE ABOVE-CAPTIONED COURT AND TO GEORGE GASCÓN, DISTRICT
22 ATTORNEY FOR THE COUNTY OF LOS ANGELES THROUGH HIS REPRESENTATIVE,
23 DEPUTY DISTRICT ATTORNEY CASEY HIGGINS:

24 PLEASE TAKE NOTICE that on a date and at a time to be designated by the Court, Defendant
25 Councilmember Curren Price Jr. shall and does hereby demur to, move to set aside, and move for an
26 order dismissing the Complaint.

27 This Notice of Demurrer and Motion to Set Aside and Dismiss Complaint is made pursuant to
28 Penal Code § 1004, the United States and California Constitutions, including their respective Due

1 Process Clauses, as well as on non-statutory grounds based on the deprivation of Defendant's substantial
2 rights. *See Stanton v. Superior Court*, 193 Cal.App.3d 265, 271 (1987); *Murgia v. Municipal Court*, 15
3 Cal.3d 286, 294 n.4 (1975).

4 This Motion is based on the concurrently filed Demurrer, the attached Memorandum of Points
5 and Authorities, the records and papers on file in this action, any hearing transcripts and such other and
6 further testimony and/or documentary evidence as may be presented at the hearing.

7

8 Dated: October 12, 2023

COHEN WILLIAMS LLP

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10 By:


11 Michael V Schafler
12 Marc S. Williams
13 Neil S. Jahss
14 Attorneys for Defendant Curren Price Jr.
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DEMURRER TO COMPLAINT

Demurrer to Count 1:

Pursuant to Penal Code § 1004, Councilmember Price demurs to Count 1 of the Complaint, charging him with violating Government Code § 1090, on the basis that the facts stated therein do not constitute a public offense. Specifically, Government Code § 1090 is a civil statute and the allegations in the Complaint are insufficient to allege a crime.

Demurrer to Count 2:

Pursuant to Penal Code § 1004, Councilmember Price demurs to Count 2 of the Complaint, charging him with violating Penal Code § 118(A), on the basis that the facts stated therein do not constitute a public offense.

Demurrer to Count 3:

Pursuant to Penal Code § 1004, Councilmember Price demurs to Count 3 of the Complaint, charging him with violating Government Code § 1090, on the basis that the facts stated therein do not constitute a public offense. Specifically, Government Code § 1090 is a civil statute and the allegations in the Complaint are insufficient to allege a crime.

Demurrer to Count 4:

Pursuant to Penal Code § 1004, Councilmember Price demurs to Count 4 of the Complaint, charging him with violating Penal Code § 118(A), on the basis that the facts stated therein do not constitute a public offense.

Demurrer to Count 5:

Pursuant to Penal Code § 1004, Councilmember Price demurs to Count 4 of the Complaint, charging him with violating Penal Code § 118(A), on the basis that the facts stated therein do not constitute a public offense.

1 **Demurrer to Counts 6-10:**

2 Pursuant to Penal Code § 1004, Councilmember Price demurs to Counts 6-10 of the Complaint,
3 charging him with violating Penal Code §§ 504/514, on the basis that the facts stated therein do not
4 constitute a public offense and the facts alleged in Counts 6-10 are barred by the statute of limitations
5 because the alleged conduct charged in the Complaint occurred outside any applicable statute of
6 limitations.

7

8 Dated: October 12, 2023

COHEN WILLIAMS LLP

9 By: _____
10 Michael V Schafler
11 Marc S. Williams
12 Neil S. Jahss
13 Attorneys for Defendant Curren Price Jr.



Michael V Schafler

Marc S. Williams

Neil S. Jahss

Attorneys for Defendant Curren Price Jr.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The District Attorney's Office has brought felony conflict-of-interest and perjury charges against
4 Los Angeles City Councilmember Curren Price based on highly attenuated connections between
5 Councilmember Price and purported City contracts with real estate partnerships owned by developers
6 Thomas Safran and Associates and GTM Holdings. According to the Complaint, Councilmember Price
7 – who for a decade has proudly represented the District in which he was born and raised while leading
8 the fight for increased minimum wage, paid sick leave, and other critical employment benefits for his
9 working class constituents – engaged in a *criminal* conflict of interest when he voted to authorize
10 purported agreements between the City and certain real estate partnerships owned by either Safran or
11 GTM because Councilmember Price's *wife's business* (Delbra Richardson & Associates ("DRA")) was
12 paid by real estate partnerships owned by those developers for valid relocation services *months before*
13 Councilmember Price's votes, in connection with DRA's legitimate work (for in all but one instance)
14 entirely *different real estate partnerships* than those that supposedly contracted with the City. But
15 curiously and tellingly, the Complaint is devoid of any allegation whatsoever that DRA's work or the
16 developer's payments had *anything whatsoever* to do with the approvals of the contracts, which were
17 non-controversial and unanimously approved on the consent calendars.

18 The DA piles on by claiming that Councilmember Price also committed perjury by failing in
19 annual financial disclosure forms (known as Form 700's) to disclose these payments to his wife's
20 business by real estate partnerships owned by developers Safran and GTM, even though Councilmember
21 Price's Form 700's do at times identify both Safran and GTM. Putting aside the lack of merit to the
22 substance of these allegations, the two counts for conflict of interest and three counts for perjury are
23 fatally flawed because the Complaint fails to plead that Councilmember Price acted with the mental state
24 (willfulness *and* knowledge) that the prosecution is required under California law to prove. It's easy to
25 see why the Complaint is defective in this manner – the DA cannot allege the required *mens rea* in good
26 faith after conducting a superficial investigation in which it neglected to interview Councilmember
27 Price, his wife, or even the members of Councilmember Price's staff who screen agenda items for
28 conflicts before Councilmember Price votes to support the City's entry into any contract. Given this

1 pleading deficiency, the allegations of criminal conflict of interest and perjury do not constitute public
2 offenses, as required under Penal Code § 1004, and the Court should sustain his demurrer to those
3 counts.

4 The Complaint also contrives five counts of embezzlement against Councilmember Price based
5 on allegations that he wrongly claimed Ms. Richardson as a dependent for health insurance coverage for
6 five years before she lawfully became his wife. Even if such allegations are presumed true solely for
7 purposes of this demurrer, Councilmember Price’s actions do not constitute embezzlement as a matter of
8 law because the Complaint does not assert that he paid for Ms. Richardson’s health insurance with funds
9 with which he was entrusted and over which he was given control for government use; he is only
10 accused of misrepresenting his marital status, which is not embezzlement under any standard. This
11 Court should reject the DA’s transparent attempt to circumvent the now long-expired statute of
12 limitations for other property crimes by bringing charges for embezzlement, which is exceptional in that
13 it has no statute of limitations. Given that the counts relating to Ms. Richardson’s health insurance do
14 not state public offenses for which the statute of limitations has not expired, Councilmember Price’s
15 demurrer to those counts should be sustained without leave to amend.

16 **II. THE COURT SHOULD SUSTAIN COUNCILMEMBER PRICE’S DEMURRER TO
17 THE ENTIRE COMPLAINT**

18 “The defendant may demur to the accusatory pleading at any time prior to the entry of a plea,
19 when it appears upon the face thereof … [t]hat the facts stated do not constitute a public offense.” Cal.
20 Penal Code § 1004. *See e.g., De La Cerdá v. Superior Court*, 75 Cal.App.5th 40, 61 (2022) (reversing
21 order overruling demurrer to felony complaint on basis that counts for substantive charge were derived
22 from penalty provision and not substantive offense); *People v. Mackie*, 100 Cal.App. 292, 295 (1929)
23 (demurrer properly sustained where allegations that defendant fled drug-treatment hospital did not
24 constitute a public offense under statute criminalizing escape from prison). Applying this standard, the
25 Complaint should be dismissed in its entirety because none of the counts alleged against Councilmember
26 Price constitute public offenses.

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1 **A. The Complaint Does Not Adequately Plead the Crime of Conflict of Interest (Counts**
2 **One and Three)**

3 The first and third counts against Councilmember Price must be dismissed because the
4 Complaint does not plead the *mens rea* – willful *and* knowing – necessary to state a public offense for
5 criminal conflict of interest under Government Code §§ 1090 and 1097. Government Code § 1090
6 “codifies the long-standing common law rule that barred public officials from being personally
7 financially interested in the contracts they formed in their official capacities.” *Lexin v. Superior Court*,
8 47 Cal.4th 1050, 1072 (2010). Section 1090 provides: “Members of the legislature, state, county,
9 district, judicial district, and city officers or employees shall not be financially interested in any contract
10 made by them in their official capacity” “A violation of [S]ection 1090 is subject to both civil and
11 criminal remedies.” *People v. Gnass*, 101 Cal.App.4th 1271, 1305 (2002). To establish a violation of
12 Section 1090 giving rise to *civil* remedies, the government must show: (1) “the defendant government
13 officials or employees participated in the making of a contract in their official capacities”; and (2) “the
14 defendants had a cognizable financial interest in that contract.” *Lexin*, 47 Cal.4th at 1074.

15 However, to seek *criminal* remedies – as the prosecution does here in Counts 1 and 3 (“the crime
16 of CONFLICT OF INTEREST in violation of GOVERNMENT CODE SECTION 1090(A), a Felony”)
17 – the government must allege something more, *i.e.*, the defendant violated Section 1090 with the
18 requisite mental state. Under Government Code § 1097, which is not pled or identified anywhere in the
19 Complaint, a person can be punished for engaging in a conflict of interest “by a fine of not more than
20 one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from
21 holding any office in this state” *if and only if* their violation of Section 1090 was “willful[.]”. Although
22 the statute criminalizing conflicts of interests speaks only to willfulness, California courts – including
23 the Supreme Court – are legion in holding that proof of a violation of Section 1097 requires a showing
24 “that the [S]ection 1090 violation was [both] *knowing* and *willful*.” *Lexin*, 47 Cal.4th at 1074 (emphasis
25 added). *See also People v. Chacon*, 40 Cal.4th 558, 570 (2007) (“To incur criminal liability [for conflict
26 of interest], an official must act both willfully and knowingly”); *Gnass*, 101 Cal.App.4th at 1279
27 (“district attorney’s failure to instruct the [grand] jury on the mental state (‘knowing’ and ‘willful’)
28 necessary for a *criminal* conflict of interest under [S]ection 1097 in combination with other irregularities

1 in the grand jury proceedings” required dismissal of indictment) (emphasis in original); *People v. Honig*,
2 48 Cal.App.4th 289, 334 (1996) (“It is true that [S]ections 1090 and 1097 do not use the word
3 “knowingly”; “[n]evertheless, [S]ection 1097 does require that the official ‘willfully violate[]’ the
4 conflict-of-interest law and the term ‘willfully,’ as we have noted, imports a requirement that ‘the person
5 knows what he is doing.’”).

6 Given Section 1097’s severe criminal penalties (not only potential imprisonment but mandatory
7 permanent disqualification from public office), the statute’s *mens rea* requirement is not merely
8 perfunctory but instead has real teeth. “To act ‘knowingly’ the official must be aware ‘there is a
9 reasonable likelihood that the contract [allegedly giving rise to a conflict] may result in a personal
10 financial benefit to him.’” *Chacon*, 40 Cal.4th at 570; *Honig*, 48 Cal.App.4th at 338; *Gnass*, 101
11 Cal.App.4th at 1305. “[W]illfully,” as applied in this context, means that the official must purposefully
12 make a contract in which he is financially interested.” *Honig*, 48 Cal.App.4th at 334. This is a
13 *subjective* standard, *i.e.*, Councilmember Price must himself have had actual awareness that he likely
14 had a financial interest in the City’s purported contracts with the developers with whom his wife
15 allegedly did business. *See, e.g.*, *Honig*, 48 Cal.App.4th at 339 (Section 1097 defendant was allowed to
16 argue to jury that “he did not perceive that the contracts would have any effect on his income because he
17 believed that the funds his wife received [for her non-profit] came from donors” rather than government
18 funds).

19 In this case, despite the DA filing felony charges against Councilmember Price for a purported
20 conflict of interest, Counts 1 and 3 of the Complaint do not allege that he violated Section 1090 willfully
21 and knowingly; in fact, those Counts make no reference to Councilmember Price’s state of mind *or even*
22 to Section 1097 at all. The prosecution’s pleading defect is not a mere oversight. The District Attorney
23 cannot allege in good faith that Councilmember Price willfully and knowingly voted for contracts in
24 which he had a financial interest when investigators failed to reach out to *any* of the key witnesses to
25 discover any evidence of Councilmember Price’s state of mind. No one in the DA’s office did even a
26 cursory interview with Councilmember Price’s wife or the staff members whose jobs included the
27 responsibility to vet potential conflicts before he voted on matters before the City Council. Nor does the
28 prosecution have evidence sufficient to explain the differences between the numerous instances in which

1 Councilmember Price did recuse himself from votes involving contracts in which his wife even
2 potentially had a financial interest.

3 Furthermore, pleading that Councilmember Price had the requisite knowledge under Section
4 1097 is daunting because the Complaint – even if taken as true for demurrer purposes – alleges
5 connections between Councilmember Price and the City’s purported contracts with developers Thomas
6 Safran & Associates and GTM Holdings that are gossamer-thin. The Complaint does not assert that
7 Councilmember Price himself had personal dealings with either developer or is a direct beneficiary of
8 their purported contracts with the City. Rather, the Complaint grounds its conflict-of-interest charges on
9 his wife’s business receiving payments from Safran and GTM *months* before the City Council votes,
10 *based on her work – that is not alleged to be anything but legitimate – for partnerships that are in most*
11 *instances entirely different entities* than those that supposedly contracted with the City, and with no
12 allegation that her work or the payments had *anything* to do with the contracts at issue.

13 In sum, the prosecution has not alleged Councilmember Price’s mental state necessary for a
14 criminal conflict of interest under Sections 1090 and 1097 because it knows full well it has no evidence
15 indicating that he had advance knowledge that the City’s purported contracts with the two developers
16 could result in a financial benefit to him. Therefore, as a matter of law, Counts 1 and 3 for felony
17 conflict of interest do not state a public offense, and Councilmember Price’s demurrer to those counts
18 should be sustained.

19 **B. The Complaint Does Not Adequately Plead the Crime of Perjury (Counts Two,
20 Four, and Five)**

21 The second, fourth and fifth counts for perjury alleged against Councilmember Price do not state
22 a public offense for the same reason that the first and third counts for criminal conflict of interest are
23 fatally flawed – they do not plead that he acted with the *mens rea* mandated by California’s perjury
24 statute. Like Government Code § 1097 with respect to conflict of interest, Penal Code § 118(a) compels
25 a showing of both willfulness and knowledge to prove perjury: “[E]very person who testifies, declares,
26 deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations,
27 depositions, or certification is permitted by law of the State of California under penalty of perjury and
28 *willfully* states as true any material matter which *he or she knows to be false*, is guilty of perjury.”

1 (Emphasis added.) The perjury counts make no reference to willfulness, and the passive-voice
2 allegation in Counts 2, 3 and 5 that the lack of disclosure of the developers' various partnerships on
3 Councilmember Price's Form 700's covering 2019-2021 "was known to be false" is insufficient.
4 Known to be false by whom – his wife? The developers? Section 118(a) requires that that the
5 prosecution plead that *Councilmember Price* knew statements on the Form 700's were false at the time
6 he certified that the Form 700's were true and correct. Given the District Attorney's feeble investigation
7 and the flimsy connections between Councilmember Price and the City's purported contracts with the
8 developers (*supra*, pp. 11-12), the prosecution cannot allege that *means rea* in good faith. Given the
9 Complaint's failure to plead the mental state required for perjury, Counts 2, 3 and 5 do not constitute a
10 public offense. The Court therefore should sustain the demurrer to those counts as well.

11 **C. The Complaint Does Not Adequately Plead the Crime of Embezzlement (Counts Six,
12 Seven, Eight, Nine and Ten)**

13 The prosecution has concocted five counts of "embezzlement" – based on Councilmember
14 Price's purported misrepresentation that Delbra Richardson was his spouse to have the City pay her
15 health insurance premiums from 2013-2017 – to sidestep the four-year statute of limitations for grand
16 theft. *Compare* Penal Code § 799 ("Prosecution ... for the embezzlement of public money[] may be
17 commenced at any time") *with* Penal Code §§ 801.5 and 803(c)(1) ("prosecution for any offense
18 described in subdivision (c) of Section 803 [which includes "grand theft"] shall be commenced within
19 four years ..."). The allegations that Councilmember Price falsely claimed that he was married to Ms.
20 Richardson to obtain insurance coverage for her as a dependent may assert wrongdoing, but they lack
21 two hallmarks of embezzlement charges: (1) the control over and entrustment with the money of
22 another, and (2) the use of such funds for a purpose different than that for which the funds were
23 provided. Cal. Penal Code § 504 provides: "Every officer of this state, or of any county, city, city and
24 county ... who fraudulently appropriates *to any use or purpose not in the due and lawful execution of*
25 *that person's trust, any property in his or her possession or under his or her control by virtue of that*
26 *trust*, or secretes it with a fraudulent intent to appropriate it to that use or purpose, is guilty of
27 embezzlement." (Emphasis added.) *See also People v. Sisuphan*, 181 Cal.App.4th 800, 813-814
28 (2010) ("The offense of embezzlement contemplates a principal's entrustment of property to an agent

1 for certain purposes and the agent's breach of that trust by acting outside his authority in his use of the
2 property"); *People v. Selivanov*, 5 Cal.App.5th 726, 750 (2016) ("The intent essential to embezzlement
3 is the intent to fraudulently appropriate the property to a use and purpose other than that for which it
4 was entrusted, in other words, the intent to deprive the owner of his property").

5 Despite the Complaint parroting language from Section 504, the prosecution does not allege *facts*
6 showing that Councilmember Price was entrusted with and given control over public funds for a
7 government purpose but then used them to purchase health insurance for Ms. Richardson. Rather, the
8 prosecution essentially asserts that Councilmember Price lied on insurance forms to falsely claim Ms.
9 Richardson as a dependent. Counts 6-10 therefore bare no relationship to prototypical embezzlement
10 cases in which defendants are charged with being entrusted with government or corporate funds and
11 using them to benefit themselves. *See e.g., Selivanov*, 5 Cal.App.5th at 740, 750-751 (charter school
12 executive director used school AMEX on personal meals, clothing and gifts); *Breceda v. Superior
Court*, 215 Cal.App.4th 934, 956-59 (2013) (officials retained the \$75 per diem available to them from
13 the City despite not having out-of-pocket expenses because their daily meals and other expenses were
14 already reimbursed by others); *Sisuphan*, 181 Cal.App.4th at 813-814 (Toyota dealership's director of
15 finance took \$30,000 from employer's safe to "use it for a purpose other than that for which the
16 dealership entrusted it to him"); *People v. Talbot*, 220 Cal. 3, 11 (1934) (president and chairman of oil
17 company used corporate funds to insure and pay for his private yacht); *People v. Hodes*, 153
18 Cal.App.2d 788, 793 (1957) (defendant paid for personal expenses using loan proceeds earmarked by
19 investors to ensure delivery of printing supplies).

20 Counts 6-10 may state claims for grand theft under Penal Code § 487, but because
21 Councilmember Price's conduct giving rise to such claims took place between 2013 and 2017 – more
22 than five years prior to the June 13, 2023 Complaint – the claims are barred by the four-year statute of
23 limitations for this crime. Cal. Penal Code §§ 801.5 and 803. The District Attorney cannot evade this
24 impenetrable barrier to prosecution by mislabeling what actually are counts for grand theft as
25 "embezzlement" charges. *See People v. Morgan*, 75 Cal.App.3d 32, 35-37 (1977) (manslaughter
26 conviction precluded by statute of limitations despite defendant originally being charged with murder,
27 for which there was no statute of limitations). Therefore, Counts 6-10 do not constitute a chargeable
28

1 public offense and Councilmember Price's demurrer to those claims also should be sustained without
2 leave to amend.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Court should sustain Councilmember Price's demurrer to all ten
5 counts in the Complaint.

6
7 Dated: October 12, 2023

COHEN WILLIAMS LLP

8 By:
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10 Michael V Schafler
11 Marc S. Williams
12 Neil S. Jahss
13 Attorneys for Defendant Curren Price Jr.
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PROOF OF SERVICE

BA515782

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 724 South Spring Street, 9th Floor, Los Angeles, CA 90014.

On October 12, 2023, I served true copies of the following document(s) described as **DEFENDANT CURREN PRICE JR.'S NOTICE OF DEMURRER AND MOTION TO SET ASIDE AND DISMISS COMPLAINT** on the interested parties in this action as follows:

Casey C. Higgins
LA District Attorney's Office
211 West Temple Street, Suite 1000
Los Angeles, CA 90012-3289
chiggins@da.lacounty.gov

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Cohen Williams LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address jpacitti@cohen-williams.com to the persons at the e-mail addresses listed in the Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 12, 2023, at Los Angeles, California.

Gentle

Jenna Pacitti